

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 75-7242

ORIGINAL

## United States Court of Appeals

For the Second Circuit.

PETER ROSENBRUCH,  
*Plaintiff-Appellant,*  
*against*

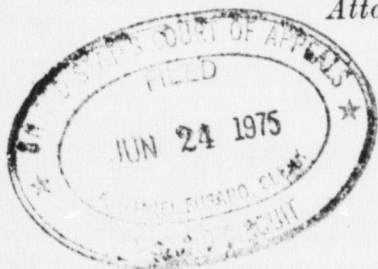
AMERICAN EXPORT ISBRANDTSEN LINES, Inc.,  
*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

### APPENDIX

GRAHAM & SIMON, P. C.,  
*Attorneys for Plaintiff-Appellant,*  
150 Broadway,  
New York, N. Y. 10038

HAIGHT, GARDNER, POOR & HAVENS,  
*Attorneys for Defendant-Appellee,*  
One State Street Plaza,  
New York, N. Y. 10004



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# United States Court of Appeals

FOR THE SECOND CIRCUIT.

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PETER ROSENBRUCH,

*Plaintiff-Appellant,*

*against*

AMERICAN EXPORT ISBRANDTSEN LINES, Inc.,

*Defendant-Appellee.*

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## Relevant Docket Entries.

Date	Proceedings
1971	
Dec. 28	Filed Complaint. Issued Summons.
Dec. 28	Filed Notice of Assignment. J. Tyler.
1972	
Jan. 4	Filed Summons and marshals ret. Served: Am. Export Isbrandsten on 12/29/71.
Jan. 18	Filed Deft Answer.
Jan. 18	Filed Deft Notice of Deposition
1973	
Mar. 15	Filed defts notice of motion, <i>Re: Partial Summary Judgment</i> , ret before Tyler J.
Mar. 15	Filed deft's memo of law in support of its motion.
Mar. 15	Filed Pltffs memo of law in opposition to defts motion, for Partial Summary Judgment
Mar. 15	Filed defts reply affidavit in support of its motion for Partial Summary Judgment, by M. E. DiOrchis

*Relevant Docket Entries*

Date	Proceedings
Mar. 15	Filed Pltffs opposing affidavit by Seymour Simon requesting summary judgment in Pltffs. favor.
Mar. 15	Filed Opinion #39312 by Tyler J. It is ruled, therefore, that container #18333 is a package for the purposes of 4(5) of COGSA, 46 U.S.C. 1304(4). Deft's motion for summary judgment on this point is granted, and, perforce, that of pltff. is denied. So Ordered Tyler J.
Mar. 28	Filed Order—Ordered that upon further consideration and reargument, the Court affirms its Order and Opinion dtd 3-15-73, denying pltff's cross-motion. Tyler, J. (mn)
Apr. 11	Filed Notice of appeal by Pltff. Fee Paid \$5.00. (n/m)
Apr. 19	Filed amended notice of appeal. (n/m)
June 14	(Illegible) Mar. 23-73
1975	
Mar. 21	Filed Final Judgment #75,247. Ordered that pltff recovers from Deft. damages limited to \$500. Ordered this judgment final in respect to both liability and damages Tyler, J. Judgment Entered. Clk (mn) Ent. 3/26/75
Mar. 21	Filed Pltff Stip & Order of liability. Final judgment should be entered in amt of \$500. in accordance with opinion of 3/15/73 & order dated 3/27/73. Tyler, J.
Apr. 15	Filed Pltffs Notice of appeal from final judgment of 3/21/75. (Mailed notice to Haight, Gardner, Poor & Havens, 4/15/75)
May 22	Filed stipulation <i>re</i> substitution of papers (originals misplaced) to be used for record on appeal.

Notice of Appeal.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

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PETER ROSENBRUCH,

*Plaintiff,*

*against*

AMERICAN EXPORT ISBRANDTSEN LINES, Inc.,

*Defendant.*

71 Civ 5662 (HRT)

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Notice is hereby given, that Peter Rosenbruch, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on March 21, 1975 (#75247—Tyler, J.).

Dated, New York, N. Y.

April 15, 1975.

GRAHAM & SIMON, P. C.

By s/ SEYMOUR SIMON

(member of firm)

Attorneys for Peter Rosenbruch

Office & P. O. Address

150 Broadway

Borough of Manhattan,

City of New York 10038

212—267 8125

To:

Clerk of the Court of Appeals

Haight, Gardner, Poor & Havens, Esqs.

Attorneys for Defendant

One State Street Plaza

New York, N. Y. 10004

**Final Judgment Appealed From.**  
**UNITED STATES DISTRICT COURT,**  
**SOUTHERN DISTRICT OF NEW YORK.**

---

PETER ROSENBRUCH,  
*Plaintiff,*  
*against*  
AMERICAN EXPORT ISBRANDTSEN LINES, Inc.,  
*Defendant.*  
71 Civ. 5662 (HRT)

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This action having come before this Court on cross-motion for partial summary judgment on the issue of limitation of liability in March, 1973, and the Court, having heard oral argument on both motions and an Opinion dated March 15, 1973, and an Order dated March 27, 1973, having been rendered, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff, Peter Rosenbruch recovers from Defendant, American Export Lines, Inc., sued herein as American Export Isbrandtsen Lines, Inc., damages sustained by Plaintiff, limited to the amount of \$500.00 and it is further

ORDERED, ADJUDGED AND DECREED that this judgment is final in respect to both liability and damages, pursuant to a Stipulation entered into between Plaintiff and Defendant on February 20, 1975.

Dated: New York, New York  
March 21, 1975

s/ HAROLD R. TYLER  
U. S. District Judge

Judgment Entered 3-24-75  
s/ RAYMOND (Illegible)

**Opinion and Order by Tyler, D. J., Dated March 15,  
1973.**

Richard T. Graham, P. C. by Seymour Simon, New York City, for plaintiff.

Haight, Gardner, Poor & Havens by M. E. DeOrchis, New York City, for defendant.

*Opinion.*

TYLER, District Judge:

This is a suit in admiralty to recover \$102,917.08 for cargo admittedly lost in trans-Atlantic transit. The facts are not in dispute, and the parties have cross-moved for partial summary judgment on the issue of limitation of liability, posing another variant of the package limitation issue considered recently by the courts of this circuit in, among others, the cases of *Leather's Best, Inc., v. S. S. Mormaclynx*, 451 F. 2d 800 (1971), and *Royal Typewriter Co., Division of Litton Business Systems, Inc., v. M/V Kulmerland*, 346 F. Supp. 1019 (S.D.N.Y. 1972).

*The Facts.*

Desiring to transport his household goods from New York to Hamburg, plaintiff-shipper contracted with the Seven Santini Bros., Inc. ("Santini"), a firm of international movers, which in turn arranged for carriage on Voyage 42 of the SS Container Forwarder, a ship designed only for container carriage, and used by its owners and operators, defendant American Export Isbrandtsen Lines, Inc. ("Export"), for New York-Northern Europe crossings.

Santini requested and was furnished without charge a container, No. 18333, measuring the standard 40' x 8' x 8', by Container Marine Lines, a division of Export. Overland movement of No. 18333 was at shipper's expense. Santini loaded and sealed the container and delivered it

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

to Export in New York City. A bill of lading dated January 8, 1971 was made out, with Rosenbruch as the consignee.

The bill of lading indicated under the column entitled "No. of Cont. or Other Pkgs." the number 1, and the words "shipper's load and count" were stamped in block letters under the typed-in description of the goods to be transported. Also in the bill, written in by Santini, was the proviso "stow under deck only". This the carrier subsequently crossed through, apparently indicating that it was to be disregarded.<sup>a</sup>

No. 18333 was in fact stowed, not under deck, but on a weather deck, and it, along with 31 other containers similarly stowed, was lost when the SS Container Forwarder encountered heavy seas en route to Hamburg.

On these facts plaintiff seeks to recover \$102,917.08, the asserted value of the cargo shipped. Defendant, while not admitting liability, claims that container No. 18333 qualifies as a "package" under §4(5) of the Carriage of Goods by Sea Act ("GOGSA"), 46 U.S.C.A. §1304(5), which by its express terms would limit any recovery in this case to \$500. Summary judgment, more in the nature of declaratory relief at this point in the proceedings, is prayed by both parties as to the applicability of §4(5).

I

Section 4(5) of COGSA is a theoretically straightforward provision, designed to prevent carriers, presumed to have the superior bargaining position, from contracting

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<sup>a</sup>After this opinion was filed, it was pointed out that the bill of lading described above was in fact the carriers' office copy. The original has been submitted, varying from the above description in that the phrase "stow under deck only" is entirely blacked out and completely illegible. A copy of both the original and the office copy are appended to this opinion. See Appendix A.

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

altogether out of liability for cargo loss or damage. A lower limit in this regard of \$500 per "package" is imposed.<sup>1</sup>

But §4(5) was enacted in 1936, well before the advent of container shipping, when \$500 at least approximated the value of the average parcel shipped. Today, as a result of the widespread movement by the world's merchant marine to "containerization", large numbers of parcels are placed in a single container, a metal box normally measuring 40' x 8' x 8', before being loaded on board ship.<sup>2</sup>

The inevitable question, whether a container is a package for §4(5) purposes, was considered most recently by the Court of Appeals for the Second Circuit in *Leather's Best, Inc., v. SS Mormaclynx*, 451 F. 2d 800 (1971), where it was determined that it was not. The container there was delivered to the shipper under the supervision of the carrier's agent, the truck driver.<sup>3</sup> The driver gave the shipper a receipt indicating the number of parcels loaded,

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<sup>1</sup>46 U.S.C. §1304(5) (1936) provides:

"(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

<sup>2</sup>See e. g. Affidavit of Seymour Simon, Exhibits 2a, b and c.

<sup>3</sup>451 F. 2d at 804. The court specifically determined the trucker to be the agent of the carrier, as the carrier had engaged him.

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

and the bill of lading itself bore the typed-in notation "1 container s.t.c. 99 bales of leather."<sup>4</sup>

These facts, it was held, indicated the understanding of all concerned that the individual bales were the packages shipped, and that the container was essentially a device for the carrier's convenience in handling and stowage.<sup>5</sup> And, also found relevant, the carrier therein could not deny knowledge of both the nature of the cargo and the number of packages employed to ship it.<sup>6</sup>

Less participation by the carrier or less knowledge on its part as to the contents of a container, the opinion noted, would present an entirely different case.<sup>7</sup> Chief Judge Friendly, writing for the court, expressly set out as possible material variations the shipper packing a container already on its premises and receiving for it a bill of lading reciting only 1 under the column left open for number of packages and cargo description.<sup>8</sup>

Just such variations, and others, were presented to this court, and, coincidentally, this writer, in *Royal Typewriter Co., Division of Litton Business Systems, Inc. v. M/V Kulmerland*, 346 F. Supp. 1019 (S.D.N.Y. 1972). The container lost there belonged to the shipper's agent, who had loaded and sealed it before delivering it to the carrier. The bill of lading given the shipper recited only "one container said to contain machinery," and the container itself was smaller than the typical ship's container, as

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<sup>4</sup>"s.t.c." corresponds to "said to contain."

<sup>5</sup>451 F. 2d at 815-816.

<sup>6</sup>451 F. 2d at 815. Note that loading of the container took place at the factory of the seller of the cargo. This would substantiate to the carrier, through its agent the trucker, the shipper's description of the merchandise.

<sup>7</sup>451 F. 2d at 815.

<sup>8</sup>*Id.*

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

here, which, as was pointed out, rendered it susceptible to confusion with typical cargo crates.<sup>9</sup>

It was clear in *Kulmerland* that the container was intended by the shipper to be the basic cargo unit, and equally clear that the carrier had not been put on notice as to the nature and value of the goods it was transporting.<sup>10</sup> The container, therefore, was held to be a "package" for §4(5) purposes.

The case at bar, however, cannot fairly be said to fall under either of the extremes represented by *Kulmerland* and *Leather's Best*. As in *Kulmerland*, the shipper alone loaded the container; the bill of lading indicated only "1" under the entry "Number of Cont. and Other Pkgs.," and the cargo description was simply, "said to contain household goods." Reminiscent of *Leather's Best*, the container was of the more typical 40' x 8' x 8' dimensions, owned by the carrier and furnished at the shipper's request.

This case, however, closely approximates the intentionally undecided hypothetical set out by Judge Friendly, varying only in that Santini did not own No. 18333, nor have it "already on its premises."<sup>11</sup>

[1] Ownership or possession in and of itself, cannot be dispositive of this case. It, along with the entire record must be considered, and inferences drawn as to the knowledge of the shipper and carrier—and the mutual understanding of the parties.

To say this, however, brings the analysis around full circle, as the facts of this case do not realistically imply the outcome. Other factors must be considered: specifically, uniformity of result and simplicity of application.

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<sup>9</sup>346 F. Supp. at 1024.

<sup>10</sup>346 F. Supp. at 1024-1025.

<sup>11</sup>451 F. 2d at 815.

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

[2, 3] The issue can first be narrowed by pointing out that it is solely with a container holding the goods of a single shipper that this opinion is concerned.<sup>12</sup> Only in this circumstance can any question of the shipper's intent arise. Moreover, it is only where the shipper packs the container or requests the carrier to do so that it becomes necessary to consider whether or not there was a "single package" under §4(5). The carrier cannot unilaterally limit its liability by taking bales delivered it by a shipper and, on its own initiative, containerize them.

Given these circumstances, however, predictability can obtain. Judge Hays in his dissent in *Encyclopaedia Britannica, Inc., v. Hong Kong Producer*, 422 F. 2d 7 at 20 (2nd Cir. 1969), would achieve this by deeming a container, where these conditions are met, a §4(5) package.<sup>13</sup> I agree.

[4] The choice between so applying §4(5), or the alternative, to ignore the container and count the contents, is grounded on several considerations. The accident of notations on the bill of lading as to package count is too uncertain to govern. Problems of proof would inhere, and shippers inevitably would be tempted to minimize package size to increase potential compensation.

More important, however, is the question of insurance. Viewing the issue from the insurance vantage point, the choice is between requiring the carrier to increase its coverage and pass on the costs of same to all shippers, even those who prefer cheaper rates and higher risks, and granting the option to the shipper to obtain that coverage he requires. COGSA, while pre-dating con-

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<sup>12</sup>See 451 F. 2d at 815, citing the dissenting opinion of Judge Hays in *Encyclopedia Britannica, Inc., v. Hong Kong Producer*, 422 F. 2d 7 at 20 (2d Cir. 1969), cert. denied, 397 U. S. 964, 90 S. Ct. 998, 25 L. Ed. 2d 255 (1970).

<sup>13</sup>See also, *Leather's Best*, *supra*, 451 F. 2d at 815.

*Opinion and Order by Tyler D. J., Dated March 15,  
1973*

tainers, did not pre-date marine insurance. This choice was before the Congress, and, on examination of the terms of §4(5), I conclude that the legislature opted for the second alternative.<sup>14</sup>

To summarize, the present record reveals that the selection of Voyage 42 and the SS Container Forwarder was made by Santini as shipper's agent; and that Santini requested use of carrier's container, with the proviso that the container hold only shipper's goods. No showing has been made that the carrier was unduly involved in the preliminary operations, as it was in *Leather's Best*. It is ruled, therefore, that container No. 18333 is a package for the purposes of §4(5) of COGSA, 46 U. S. C. §1304(5). Defendant's motion for summary judgment on this point is granted, and perforce, that of plaintiff is denied.

It is so ordered.

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<sup>14</sup>See text of statutory provisions at fn. 1; see also, of course, paragraph 17 of the applicable bill of lading set forth in Appendix B hereto; see the similar language contained in the bill of lading pertinent in *Leather's Best*, *supra*, at 805-806.

APPENDIX A, ANNEXED TO OPINION BY TYLER, D. J.

## APPENDIX A

**AMERICAN EXPORT FREIGHT, INC. Agent**  
For AMERICAN EXPORT INDIAN LINES, INC., Carrier

**ORIGINATING CARRIER TO STEAMER**  
Sartini Brothers Inc. Ref. #1-68305

**PLACE OF ORIGIN**  
Hamburg

**LAB. NUM. OF REFERENCE**  
Job # J27477

**FORWARDING AGENT REFERENCES - FMC NO**  
Savab Brothers International FMC139

**EXPORT DEC. NO.**

**BILL OF LADING**  
(THE SCOPE OF THE BILL OF LADING IS DESCRIBED IN CLAUSE 3 HEREOF)

**SHIPPER (N. ME AND ADDRESS)**  
Sartini Brothers Inc. For Peter Rosenbruk

**CONSIGNEE TO ORDER OF**  
Peter Rosenbruk & Home Pack Transport, GmbH, Kronenstrasse 4, 6000 Frankfurt, Main, Germany

**ADDRESS ARRIVAL NOTICE TO (NAME AND ADDRESS)**  
Same

**DELIVERY INSTRUCTIONS OR DESTINATION**  
Same

**VESSEL**  
VE STORMWARDER

**PLAC**  
1/9/70

**PIER**  
Pier 13, Staten Island

**PORT OF LOADING**  
NY

**FOR TRANSHIPMENT TO**  
(IF OTHER AND TO BE TRANSHIPMENT BE FORWARDED AT FOOT OF THIS BILL)

**DESTINATION**  
Hamburg

PART I - CARRIER'S RECEIPT		PART II - PARTICULARS FURNISHED BY SHIPPER		
NAME AND NUMBER SEAL NUMBERS	NO. OF CONT. OR OTHER PKGS.	DESCRIPTION OF GOODS	MEASURE WEIGHT	GROSS WEIGHT CARGO IN POUNDS
Peter Rosenbruk & Home Pack Transport GmbH Hamburg, Germany	1	40' CMU #183333 Cont. Booking #8 used household goods House to House Shippers load & Count	2205	17,300Net
	1	31ft box used household goods	96	1250
<p style="text-align: center;">Ocean freight prepaid</p> <p>These commodities licensed by the U. S. for ultimate destination Germany. Diversions contrary to U. S. law prohibited.</p>				

**SHIPPER'S LOAD AND COUNT**

**FREIGHT TO BE PREPAID AT**

In connection with freight, see clause 15 and 17 of this bill of lading.

@ per 100 lbs. \$

@ per 2240 lbs. \$

ft. in. @ per 40 cu. ft. \$

kgs. @ per 1000 kgs. \$

cbm. @ per cbm. \$

Extra charge for declared Value of \$ per pkg. \$

TOTAL \$

IN ACCEPTING THIS BILL OF LADING the Shipper, Consignee, Holder hereof, and Owner of the goods agree to be bound by all of its stipulations, terms, and conditions, whether written, printed, or stamped on the front or back hereof, as well as the provisions of the above Carrier's published Tariff Rules and Regulations as fully as if they were all signed by each Shipper, Consignee, Holder or Owner, and it is further agreed Consignee may be issued on Deck, as per Clause 7.

IN WITNESS WHEREOF, the Master of the said vessel has affixed to (hereby) 3 bills of lading, all of this tenor and date, ONE of which being accomplished, the others to stand void.

AMERICAN EXPORT FREIGHT, INC., Agent  
For AMERICAN EXPORT INDIAN LINES, INC., Carrier  
For The Master

by .....

**BILL OF LADING NUMBER**

**DATED AT**

TERMS OF BILL OF LADING CONTINUED ON REVERSE SIDE

## APPENDIX A, ANNEXED TO OPINION BY TYLER, D. J.

**A. AMERICAN EXPORT FREIGHT, INC. Agent**  
For AMERICAN EXPORT HIRSHANDTSEN LINES, INC., OFFICE 800 BROADWAY, NEW YORK, N. Y. 100

CABLE ADDRESS: EXPOSHIP		ORIGINATING CARRIER TO STEAMER	PLACE OF ORIGIN	CAR NUMBER-REFERENCE
Santini Brothers Inc.		Ref. 21-68305		Job # J8747
FORWARDING AGENT - REFERENCES - FMC NO		SHIPMENT NO.		
Sevch Brothers International FMC6139		1001		
SHIPPER (NAME AND ADDRESS)		BILL OF LADING		
Santini Brothers Inc. For Peter Rosenbruk		(THE SCOPE OF THE BILL OF LADING IS DESCRIBED IN CLAUSE 3 HEREOF) CONTAINER NO. 1001		
CONSIGNEE TO ORDER OF		DELIVERY INSTRUCTIONS OR DESTINATION		
Peter Rosenbruk % Mann Pack Transport, GmbH, Kroegestrasse 4, 6000 Frankfurt, Main, Germany				
ADDRESS ARRIVAL NOTICE TO (NAME AND ADDRESS)				
Same		Same		
INTERFORWARDER		PLAC		PORT OF LADING
1/9/70		Pier 13, Staten Island		NY
PART I - CARRIER'S DECLARATION		PART II - PARTICULARS FURNISHED BY SHIPPER		
NAME AND NUMBER OF CARRIER		DESCRIPTION OF GOODS		
Peter Rosenbruk		40' CMU #183333 Cont.		
% Mann Pack Transport		Booking #8 used household goods		
GmbH		House to House Shippers load & Count		
Hamburg, Germany		11ft box used household goods		
		Stow-under-deck only		
		Ocean freight Prepaid		
		These commodities licensed by the U. S. for ultimate destination Germany. Diversions contrary to U. S. law prohibited.		
		SHIPPER'S LOAD AND COUNT		
		2205		
		17,000 lb		
		42 2/3		
		200 10 1/2		
		1350		
		42 25		

The undersigned hereby certifies that it is operating under Revised No. 12842 regulations of the Federal Maritime Commission, and its predecessor and has performed in addition to the performance and securing of the cargo for the ship or the booking of, or otherwise in connection with, the cargo, two or more of the following services: (Check services performed)

(1) The preparation and processing of the ocean bill of lading.

(2) The preparation and processing of dock receipts or delivery orders.

(3) The preparation and processing of bills of lading for cargo and destinations.

(4) The preparation and processing of bills of lading for cargo and destinations.

(5) The preparation and processing of bills of lading for cargo and destinations.

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(66) The preparation and processing of bills of lading for cargo and destinations.

(67) The preparation and processing of bills of lading for cargo and destinations.

(68) The preparation and processing of bills of lading for cargo and destinations.

(69) The preparation and processing of bills of lading for cargo and destinations.

(70) The preparation and processing of bills of lading for cargo and destinations.

(71) The preparation and processing of bills of lading for cargo and destinations.

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(80) The preparation and processing of bills of lading for cargo and destinations.

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(90) The preparation and processing of bills of lading for cargo and destinations.

(91) The preparation and processing of bills of lading for cargo and destinations.

(92) The preparation and processing of bills of lading for cargo and destinations.

(93) The preparation and processing of bills of lading for cargo and destinations.

(94) The preparation and processing of bills of lading for cargo and destinations.

(95) The preparation and processing of bills of lading for cargo and destinations.

(96) The preparation and processing of bills of lading for cargo and destinations.

(97) The preparation and processing of bills of lading for cargo and destinations.

(98) The preparation and processing of bills of lading for cargo and destinations.

(99) The preparation and processing of bills of lading for cargo and destinations.

(100) The preparation and processing of bills of lading for cargo and destinations.

Extra charge for declared Value of \$ \_\_\_\_\_ per pkg. \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

Rev. 1051:5/70

TERMS OF BILL OF LADING CONTINUED ON REVERSE SIDE

**Exhibit B, Annexed to Opinion by Tyler, D. J.**

17. In case of any loss or damage to or in connection with goods exceeding in actual value the equivalent of \$500 lawful money of the United States, per package, or, in case of goods not shipped in packages, per shipping unit, the value of the goods shall be deemed to be \$500 per package or per shipping unit. The Carrier's liability if any, shall be determined on the basis of a value of \$500 per package or per shipping unit or pro rata in case of partial loss or damage, unless the nature of the goods and a valuation higher than \$500 per package or shipping unit shall have been declared in writing by the Shipper upon delivery to the Carrier and inserted in this bill of lading and extra charge paid. In such case if the actual value of the goods per package or per shipping unit shall exceed such declared value, the value shall nevertheless be deemed to be declared value and the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value. The words "shipping unit" shall mean each physical unit or piece of cargo not shipped in a package, including articles or things of any description whatsoever, except goods shipped in bulk, and irrespective of the weight or measurement unit employed in calculating freight charges. \* \* \*

Order by Tyler, D. J., Dated March 27, 1973.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The Court having held a further hearing on March 23, 1973, on plaintiff's cross-motion for partial summary judgment in its favor holding defendant is not entitled to limit its liability to \$500 for loss of the container, and the Court having heard further argument from counsel for both sides and

HAVING NOTED that the relevant bill of lading, as prepared by plaintiff's FMC-licensed forwarding agent, contained a notation on its face, "Stow Under Deck Only," and

HAVING NOTED that Clause 7 of the printed form contains a provision as follows:

"Goods may be stored in container(s). Containers may be stowed on deck (unless this bill of lading is claused 'stow under deck' on the face hereof) and when so stowed shall be deemed for all purposes to be stowed under deck,"

and,

HAVING NOTED that the Tariff Rules and Regulations of the North Atlantic Continental Conference, filed with the Maritime Commission as Freight Tariff 29 FMC-4, which the Court finds applicable to the Container Forwarder, a container vessel, on this particular North Atlantic voyage, and to the shipment in suit, contains Trailer/Container Traffic General Rule No. 13 C, which provides as follows:

"Since it is necessary that Containers be stowed on or under deck at the Member Line's options,

*Appendix, Annexed to Order by Tyler, D. J., Dated  
March 27, 1973*

Bill of lading specifically claused to provide under-  
deck stowage will not be issued,"<sup>1</sup>

and

HAVING FOUND that before signing of the bill of lading submitted by the Forwarding Agent, the Carrier blocked out in solid black ink the words "Stow Only Under Deck", so that they became illegible on the shiper's copy,<sup>a</sup> and that the Plaintiff's Forwarding Agent accepted the bill of lading as changed,

Now, upon further consideration and reargument, the Court affirms its Order and Opinion dated March 15, 1973, denying plaintiff's cross-motion.

Dated: March 27, 1973.

/s/ H. R. TYLER, JR.  
U. S. D. J.


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<sup>1</sup>See footnote 12, *Encyclopedia Britannica v. Hong Kong Producer*, 422 F. 2d 7, 18 (2 Cir., 1969), 1969 A.M.C. 1741, 1756.

<sup>a</sup>See Appendix.

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**Appendix, Annexed to Order by Tyler, D. J., Dated  
March 27, 1973.**

(See opposite page.) 

17a

AMERICAN EXPORT FREIGHT, INC. Agent

CABLE ADDRESS: EXPOSHIP

For AMERICAN EXPORT ISBRANDTSEN LINES, INC., Carrier

26 BROADWAY, NEW YORK, N. Y. 10004

ORIGINATING CARRIER TO STEAMER.

Santini Brothers Inc.

Ref. #1-68305

PLACE OF ORIGIN

CAR NUMBER-REFERENCE

Job # J27477

FORWARDING AGENT - REFERENCES - FMC NO.

Seven Brothers International FMC#139

EXPORT DEC. NO.

If Through Bill, indicate here ->  
Type word "Through"

BILL OF LADING

(THE SCOPE OF THE SEA VOYAGE IS DESCRIBED IN CLAUSE 3 HEREOF)

SHIPPER (NAME AND ADDRESS)

Santini Brothers Inc. For Peter Rosenbruk

CONSIGNEE TO  
ORDER OF

Peter Rosenbruk % Home Pack Transport, GMSH, Koenigsstrasse 4, 6000

Frankfurt, Main, Germany

ADDRESS ARRIVAL NOTICE TO (NAME AND ADDRESS)

Same

DELIVERY INSTRUCTIONS OR DESTINATION

Same

VESSEL

FLAG

PIER

PORT OF LOADING

VS TENDARDER

1/9/70

Pier 13, Staten Island

NY

PORT OF DISCHARGE (WHERE GOODS ARE TO BE DELIVERED TO CONSIGNEE OR ON-CARRIER)

Hamburg

FOR TRANSHIPMENT TO  
(IF GOODS ARE TO BE TRANSSHIPPED OR FORWARDED AT PORT OF DISCHARGE)  
DESTINATION

PART I - CARRIER'S RECEIPT

PART II - PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS SEAL NUMBERS	NO. OF CONT. OR OTHER PKGS	DESCRIPTION OF GOODS	MEASURE- MENT	GROSS WEIGHT CARGO IN POUNDS
Peter Rosenbruk % Home Pack Transport GMSH Hamburg, Germany	1	40' CHLU #183333 Cont. Booking #8 used household goods House to House Shippers load & Count	2205	17,200 lbs
	1	11ft box used household goods Ocean freight prepaid	96	1250
These commodities licensed by the U. S. for ultimate destination Germany. Diversions contrary to U. S. law prohibited.				

SHIPPERS LOAD AND COUNT

FREIGHT TO BE PREPAID AT

In connection with freight, see clause 15  
and 17 of this bill of lading.

@ per 100 lbs. \$  
@ per 2240 lbs. \$  
ft. in. @ per 40 cu. ft. \$  
kgs. @ per 1000 kgs. \$  
cbm. @ per cbm. \$  
\$  
\$

Extra charge for declared

Value of \$ per pkg. \$

TOTAL \$

IN ACCEPTING THIS BILL OF LADING the Shipper, Consignee, Holder hereof, and Owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions, whether written, printed, or stamped on the front or back hereof as well as the provisions of the above Carrier's published Tariff Rules and Regulations as fully as if they were all signed by such Shipper, Consignee, Holder or Owner, and it is further agreed Containers may be stowed on Deck, as per Clause 7.

IN WITNESS WHEREOF, the Master of the said vessel has affirmed to (Number) 3 bills of lading, all of this tenor and date, ONE of which being accomplished, the others to stand void.

AMERICAN EXPORT FREIGHT, INC., Agent

For AMERICAN EXPORT ISBRANDTSEN LINES, INC., Carrier

For The Master

By .....

BILL OF LADING NUMBER

DATED AT

20. Nothing in this bill of lading shall operate to deprive the Carrier of any statutory protection or exemption from, or limitation of liability, contained in the laws of the United States, or in the laws of any other country which may be applicable. This bill of lading shall be governed according to the laws of the United States and the shipper, consignee and holder hereof agree that any suit against the Carrier shall be brought in the Federal Courts of the United States in the City of New York. The terms of this bill of lading shall be severable, and if any part or term hereof shall be held to be invalid, such holding shall not effect the validity or enforceability of any other part or term hereof.

Civil Action in Admiralty.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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PETER ROSENBRUCH,

*Plaintiff,*

*against*

SS CONTAINER FORWARDER, her engines, etc.,

*and against*

AMERICAN EXPORT ISBRANDTSEN LINES, Inc.,

*Defendants.*

---

1. This is an action in tort for cargo loss and damage within the Admiralty and Maritime Jurisdiction. Plaintiff invokes the maritime procedures specified in Rule 9(h).

2. Defendant is a corporation with its office and place of business at 26 Broadway, in the City and State of New York.

3. During all times herein mentioned the defendant owned and operated the SS Container Forwarder in the common carriage of goods by sea for hire between the ports of New York and Hamburg, Germany.

4. The SS Container Forwarder is now or during the pendency of this action will be within this District.

5. On or about the 8th day of January, 1971, at New York, Santini Bros., Inc., as agents for the plaintiff, delivered to the defendant and to the SS Container Forwarder a shipment consisting of one 40' container and one lift box of household goods belonging to the plaintiff



*Civil Action in Admiralty*

in good order and condition, and the defendant then and there accepted the said shipment and in consideration of certain agreed freight charges agreed to transport the said shipment as a common carrier to the port of Hamburg, Germany, and there deliver the same in like good order and condition as when shipped to the order of the plaintiff in accordance with the valid terms of a certain bill of lading numbered 5 issued to the plaintiff's agents by the defendant and the SS Container Forwarder.

6. The said bill of lading when issued by the defendant and the vessel was a "clean" bill of lading and nothing contained on the face thereof indicated that the shipment was stowed on the deck of the vessel.

7. Thereafter the defendant loaded the said shipment on the deck of the SS Container Forwarder and the said vessel having the said shipment thus stowed on deck sailed from the port of New York and subsequently arrived at the port of Hamburg where the said vessel and the said defendant failed to discharge and deliver the said shipment as a result of it having been lost overboard from the deck of the vessel.

8. By reason of the said stowage of the shipment on the deck of the SS Container Forwarder thus exposing the shipment to the hazards of the sea contrary to the clean bill of lading the defendant and the said vessel abrogated the said contract of carriage as evidenced on the face of the said bill of lading and unreasonably deviated therefrom thus rendering the defendant and the vessel responsible as insurers for the safety of the said shipment.

9. Plaintiff was the consignee and owner of the said shipment and brings this action on his own behalf and on behalf and for the benefit of all parties who may be or become interested in the said shipment as their interests may ultimately appear.

*Civil Action in Admiralty*

10. All conditions precedent required on the part of the cargo interests herein have been performed or have occurred.

11 By reason of the premises plaintiff and other said parties in interest have sustained damages in the amount of \$102,917.08 as nearly as the same can now be estimated, no part of which has been paid although the same has been duly demanded.

WHEREFORE, plaintiff prays for:

1. Issuance of process for the arrest of the vessel with notice to all persons claiming any interest therein to file claim to the vessel and an appearance and answer to this complaint.

2. Interlocutory judgment declaring the right of plaintiff to recover its damages and directing the condemnation and sale of the vessel with the application of the proceeds thereof to payment to plaintiff of the amount found due.

3. Computation of the amount due to the plaintiff by reference to a Commissioner pursuant to Rule 53(b).

4. Final judgment against the defendants and vessel or claimant for the amount found due to the plaintiff with interest and costs.

5. Such other and further relief as in law and justice plaintiff may be entitled to receive.

s/ RICHARD T. GRAHAM  
Attorney for Plaintiff  
Office & P. O. Address  
150 Broadway  
New York, N. Y. 10038

(Verified December 15, 1961.)

## Answer.

## UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

## [SAME TITLE.]

Defendant, by its attorneys, Haight, Gardner, Poor & Havens, alleges upon information and belief as follows:

1. Denies each and every allegation contained in paragraph 1 of the Complaint.

2. Admits the allegations contained in paragraph 2 of the Complaint.

3. Admits the defendant owned and operated the SS Container Forwarder in the ocean carriage of goods by sea for hire between the ports of New York and Hamburg, Germany, but except as so specifically admitted, denies the allegation contained in paragraph 3 of the Complaint.

4. Denies each and every allegation contained in paragraph 4 of the Complaint.

5. Admits on or about the 8th day of January, 1971, at New York, Santini Bros. Inc. delivered to the defendant and to the SS Container Forwarder a shipment consisting of one 40' container and one lift box of goods and the defendant then and there accepted the said shipment and in consideration of certain agreed freight charges agreed to transport the said shipment as an ocean carrier to the port of Hamburg, Germany, and there deliver the same in accordance with the valid terms of a certain bill of lading numbered 5 issued by the defendant and the SS Container Forwarder but except as so specifically admitted, denies the allegations contained in paragraph 5 of the Complaint.

*Answer*

6. Denies each and every allegation contained in paragraph 6 of the Complaint.

7. Admits that the said shipment was loaded on the deck of the SS Container Forwarder and the said vessel having the said shipment thus stowed on deck sailed from the port of New York and subsequently the said shipment was lost overboard from the deck of the vessel, but except as so specifically admitted, denies the allegations contained in paragraph 7 of the Complaint.

8. Denies each and every allegation contained in paragraph 8 of the Complaint.

9. Denies each and every allegation contained in paragraph 9 of the Complaint.

10. Denies each and every allegation contained in paragraph 10 of the Complaint.

11. Denies each and every allegation contained in paragraph 11 of the Complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANT AMERICAN EXPORT ISBRANDTSEN LINES, INC., ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

12. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraph 1 through 11, inclusive, of this Answer, with the same force and effect as if herein set forth at length.

13. The said shipment as hereinbefore described in this Answer was subject to all the terms, conditions and exceptions contained in a certain bill of lading, then and there issued therefor by which the shipper and consignee of said bill of lading agreed to be and are bound.

*Answer*

14. Said shipment was transported on the said vessel subject to the contractual terms and conditions of the bill of lading.

Any shortage, loss and/or damage to the goods, was due to causes for which neither the carrier nor the ship was liable or responsible by virtue of the provisions of the Carriage of Goods By Sea Act, approved April 16, 1936, and/or Harter Act, and/or the provisions of the said bill of lading, and/or applicable tariffs.

15. Due diligence was exercised on the part of the carrier to make the vessel seaworthy with respect to the voyage referred to in the Complaint, and the said vessel was, in fact, seaworthy for the said voyage.

WHEREFORE, Defendant, American Export Isbrandtsen Lines, Inc., demands judgment dismissing the Complaint herein, together with costs and disbursements of this action.

HAIGHT, GARDNER, POOR & HAVENS  
Attorneys for Defendant American  
Export Isbrandtsen Lines, Inc.  
By LEROY J. CORSA  
A Member of the Firm  
One State Street Plaza  
New York, New York 10004

**Defendant's Notice of Motion for Partial Summary  
Judgment.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

SIRS:

Please Take Notice that pursuant to Rule 56 of the Federal Rules of Civil Procedure, the defendant herein will move this Court at a stated term for the hearing of a motion on 22nd day of December, 1972 at 2:15 P. M., on the forenoon of that day or as soon thereafter as counsel can be heard, at Room 1305 of the United States Court House, Foley Square, New York, New York, for an order granting summary judgment in its favor limiting plaintiff's recovery, if any, to \$500 on the grounds that there is no genuine issue as to any material fact on the issue of damages and that if plaintiff is entitled to any judgment the amount recoverable is limited to \$500 as a matter of law under Section 1304(5) of Title 46, U. S. Code, The U. S. Carriage of Goods by Sea Act, 1936.

This motion is based upon the pleadings, the attached relevant Bill of Lading marked "Exhibit A", the affidavit of M. E. DeOrchis, Esq., and the attached memorandum

*Defendant's Notice of Motion for Partial Summary  
Judgment*

of law. The defendant shall petition the Court also for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York,  
December , 1972.

Yours, etc.,

HAIGHT, GARDNER, POOR & HAVENS  
Attorneys for Defendant, American  
Export Isbrandtsen Lines, Inc.

By s/ M. E. DEORCHIS  
A Member of the Firm  
One State Street Plaza  
New York, New York 10004

To:

Richard T. Graham, Esq.  
Attorney for Plaintiff  
150 Broadway  
New York, New York 10038

**Affidavit of M. E. DeOrchis in Support of Motion.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,  
County of New York, ss:

M. E. DEORCHIS, being duly sworn, deposes and says:

That he is an attorney-at-law and a member of the law firm of Haight, Gardner, Poor & Havens, attorneys for the defendant, American Export Isbrandtsen Lines, Inc. I make this affidavit in support of defendant's motion for summary judgment in its favor limiting plaintiff's recovery, if any, to the sum of \$500.

This action involves the alleged loss of the contents of a container carried aboard the S. S. Container Forwarder, Voyage 42, pursuant to Bill of Lading #5, New York/Hamburg, dated January 8, 1971.

The S. S. Container Forwarder was a container ship owned and operated by defendant in the New York/North Europe container trade. She carried only containers. As listed in Lloyd's Registry, her gross tonnage was 15,461 long tons, net 9,750 long tons; her length overall was approximately 583 feet, with 78 feet beam.

This action was commenced by the filing of Summons and Complaint on December 14, 1971 against the vessel and her owner, American Export Isbrandtsen Lines, Inc. (hereinafter AEIL)

According to the Complaint, the plaintiff seeks to recover damages for an alleged breach of the contract of carriage (Complaint, par. 8).

Plaintiff was the consignee and owner of the said shipment.

Defendant has appeared and answered. Defendant admits that:

*Affidavit of M. E. DeOrchis in Support of Motion*

(a) It owned and operated the S. S. Container Forwarder in ocean carriage of goods by sea for hire between the ports of New York and Hamburg, Germany;

(b) On or about the 8th day of January, 1971, at New York, Santini Bros. Inc., delivered to the defendant and the S. S. Container Forwarder a shipment consisting of one 40' container;

(c) In consideration of certain agreed freight charges agreed to transport said shipment as an ocean carrier to the port of Hamburg, Germany, and there delivered the same in accordance with the valid terms of a certain bill of lading numbered 5 signed by defendant AEIL.

(d) The said shipment was loaded on the deck of the S. S. Container Forwarder and the vessel sailed from the port of New York.

(e) Subsequently said shipment was lost overboard from the deck of the S. S. Container Forwarder.

(f) Bill of Lading #5 was prepared by the shipper's forwarding agent, Seven Brothers International and was signed by AEIL. In Part I, Carrier's Receipt, of the Bill of Lading, the column "No. of Containers or other packages" contains the number "1". Part II, which sets forth the particulars furnished by the shipper describes the cargo as: 40' CMLU No. 18333-CONT. Booking No. 8-Used Household Goods, house-to-house, shippers load and count. (See "Exhibit A").

The term "house-to-house" indicates the container was loaded by the shipper at his warehouse and was to be delivered to the consignee at his warehouse.

*Exhibit A, Annexed to Affidavit of M. E. DeOrchis*

The CMLU in front of the container number indicates the container was owned by Container Marine Lines, a division of AEIL. The shipper did not declare a higher valuation than \$500, as he might have pursuant to Sec. 1304(5) of COGSA and Para. 17 of the Bill of Lading. In fact, during the overlaid carriage by Santini Brothers, I.C.C. truckers, shipment was made under a released valuation of only \$50 (Exhibit B). Obviously plaintiff was interested in low freight rates and preferred to cover excess losses under his own insurance.


The only issue presented by this motion is whether the container in question constitutes a "package" within the meaning of the Carriage of Goods by Sea Act of the United States, Title 46, U. S. Code, Section 1304(5). This issue is dealt with fully in the memorandum of law and exhibits attached.

WHEREFORE, deponent respectfully prays for an order, granting partial summary judgment in its favor limiting plaintiff's recovery, if any, to \$500, in accordance with the provisions of 46 U. S. Code, Section 1304(5).

(Sworn to by M. E. DeOrchis, December 7, 1972.)

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**Exhibit A, Annexed to Affidavit of M. E. DeOrchis—  
Bill of Lading.**

(See opposite page.) 

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AMERICAN EXPORT FREIGHT, INC. Agent

CABLE ADDRESS: EXPOSHIP For AMERICAN EXPORT ISBRANDTSEN LINES, INC., Officer 26 BROADWAY, NEW YORK, N. Y. 100

ORIGINATING CARRIER TO STEAMER PLACE OF ORIGIN CAR NUMBER-REFERENCE

Santini Brothers Inc. Ref. #1-68306 Job # J2747

FORWARDING AGENT - REFERENCES - FMC NO. Seven Brothers International FMC#139 JAN 6 1971 EXP. NO.

Through Bill, indicate here -> (THE SCOPE OF THE SEA VOYAGE IS DESCRIBED IN CLAUSE 3 HEREOF) CONTAINER REGISTRATION

SHIPPER (NAME AND ADDRESS) Santini Brothers Inc. For Peter Rosenbruk

CONSIGNEE TO ORDER OF Peter Rosenbruk % Home Pack Transport, GMBH, Koenigsstrasse 4, 6000 Frankfurt, Main, Germany

ADDRESS ARRIVAL NOTICE TO (NAME AND ADDRESS) Same DELIVERY INSTRUCTIONS OR DESTINATION Same

ENT-FORWARDER 1/9/74 FLAG PIER Pior 13, Staten Island PORT OF LOADING NY

PORT OF DISCHARGE (WHERE GOODS ARE TO BE DELIVERED TO CONSIGNEE OR ON-CARRIER) Hamburg VIA BREMEN FOR TRANSHIPMENT TO (IF GOODS ARE TO BE TRANSHIPMENT OR FORWARDED AT PORT OF DISCHARGE) DESTINATION

PART I - CARBON'S PART II - PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS SEAL NUMBERS	NO. OF CONT. OR OTHER PKGS	DESCRIPTION OF GOODS	MEASURE- MENT	GROSS WEIGHT CARGO IN POUNDS
Peter Rosenbruk % Home Pack Transport GMBH Hamburg, Germany	1	40' CMLU #183333 Cont. Booking #8 used household goods House to House Shippers load & Count	2205	17,000
	1	11ft box used household goods Stow under deck only	96	422
		Ocean freight prepaid		1250
		These commodities licensed by the U. S. for ultimate destination Germany. Diversions contrary to U. S. law prohibited.		422

DR - 204 S/O (K) 6.7.1971

SHIPPER'S LOAD AND COUNT

The undersigned hereby certifies that it is operating under license No. 139 and regulation No. 2597, Federal Marine Commission, or its predecessors and has performed in addition to the solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging for space for, such cargo, two or more of the following services: (Check services performed)

- (1) The coordination of the movement of the cargo to the ship;
- (2) The preparation and processing of the ocean bill of lading;
- (3) The preparation and processing of dock receipts or delivery orders;
- (4) The preparation and processing of any other documents or export declarations;

In connection with freight, see clause 15 and 17 of this bill of lading.

SEVEN BROTHERS INTERNATIONAL Inc.  
@ per 100 lbs. \$  
@ per 2240 lbs. \$  
ft. in. @ per 40 cu. ft. \$  
kgs. @ per 1000 kgs. \$  
cbm. @ per cbm. \$

Extra charge for declared Value of \$ per pkg. \$  
TOTAL \$

FREIGHT TO BE PREPAID AT

IN ACCEPTING THIS BILL OF LADING the Shipper, Consignee, Holder hereof, and Owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions, whether written, printed, or stamped on the front or back hereof as well as the provisions of the above Carrier's published Tariff Rules and Regulations as fully as if they were all signed by such Shipper, Consignee, Holder or Owner, and it is further agreed Containers may be stowed on Deck, as per Clause 7.

IN WITNESS WHEREOF, the Master of the said vessel has affirmed to (Number) 3 bills of lading, all of this tenor and date, ONE of which being accomplished, the others to stand void.


AMERICAN EXPORT FREIGHT, INC., Agent For AMERICAN EXPORT ISBRANDTSEN LINES, INC., Carrier For The Master

By .....

BILL OF LADING NUMBER 5 DATED AT N.Y. 1-8-71



**Exhibit B, Annexed to Affidavit of M. E. DeOrchis—  
Letter.**

(See opposite page.) 

31a

270-4753C

CABLE ADDRESS "RICHGRAM"

LAW OFFICES

RICHARD T. GRAHAM P.C.  
ATTORNEY AND COUNSELLOR AT LAW  
150 BROADWAY  
NEW YORK, N. Y. 10038

RICHARD T. GRAHAM  
SEYMOUR SIMON  
CHARLES E. DENNISON

HENRY E. OTTO  
COUNSEL

(212) 267-8125

October 25, 1972

Haight, Gardner, Poor & Havens, Esqs.  
One State Street Plaza  
New York, New York 10004

ATT: M. E. DE ORCHIS, ESQ.

RE: SS CONTAINER FORWARDER -  
PETER ROSENBRUCH  
YOUR FILE: 270-4753C  
OUR FILE: AX-484-SS

Dear Sirs:

In accordance with your request, I enclose herewith the invoice of Santini Brothers for packing for export, stowing in the container and trucking to the steamship company's pier, together with a photostat copy of the ICC bill of lading issued by the 7 Santini Brothers for the local hauling.

As you know, an ICC carrier is liable as an insurer for all goods in its custody in accordance with their tariffs, which are approved by the Interstate-Commerce Commission. The local trucking to the pier is completely irrelevant to ocean transportation of goods in accordance with the COGSA. Local carriers have a \$50.00 limit.

As you will note, Santini Brothers' bill includes the cost of various types of packages, 129 in number.

Kindly let us have your advices regarding the settlement which we discussed, at your earliest convenience.

Very truly yours,

RICHARD T. GRAHAM P.C.

BY: 

SEYMOUR SIMON

SS:mep  
Encls.

15 3 11 97 1007251

**Affidavit of Seymour Simon in Opposition to Defendant's Motion and in Support of Plaintiff's Cross-Motion.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,  
County of New York, ss:

SEYMOUR SIMON, being duly sworn, deposes and says:

I am an attorney-at-law associated with Richard T. Graham, Attorney for the plaintiff. I make this affidavit in opposition to the defendant's motion for summary judgment returnable December 22, 1972, and in support of a cross-motion on behalf of the plaintiff for summary judgment holding that defendant is guilty of a deviation, and, thus, not entitled to any package limitation whatsoever; or in the alternative, for summary judgment holding that defendant is not entitled to limit its liability to \$500.00 for the entire contents of the 40' metal shipping container supplied to plaintiff by defendant for the voyage.

Plaintiff's shipment valued at \$102,917.08 was lost overboard along with 31 other containers from the deck of the defendant's vessel during the voyage from New York to Hamburg in January 1971. This was a winter crossing of the North Atlantic ocean when heavy weather is common and an expected occurrence. The shipments in the containers that were stowed under deck in the same ship were not lost overboard, on the contrary, they arrived safely at the completion of the voyage.

The shipper's agent claused the bill of lading: "stow under deck only." The carrier apparently drew a line through this clause. The carrier did not indicate on the face of the bill of lading that the plaintiff's shipment was



*Affidavit of Seymour Simon in Opposition to Defendant's  
Motion and in Support of Plaintiff's Cross-Motion*

to be stowed on deck. Clause 7 of defendant's bill of lading provides: ". . . containers may be stowed on deck (unless the bill of lading is claused 'stow under deck' on the face hereof) . . ."

The defendant charged plaintiff freight at the rate of \$42.25 per 40 cubic feet of space which the shipment would have displaced if stowed in the ship's carrying compartments in accordance with the attached freight bill marked Exhibit 1.

Defendant's tariffs do not provide for varying freight rates depending on whether the number of packages are shown in the bill of lading or not; nor do the defendant's freight rates vary or depend on the number of packages shown in the bill of lading.

Defendant's tariffs do not provide for varying freight rates depending on where the shipment was stowed, e.g., under or on the deck of the ship; defendant's freight rates are the same for the same commodity regardless of whether the shipment was stowed on deck or under deck.

Defendant, in stowing plaintiff's shipment, was not concerned with the number of packages in its bill of lading "said to be" in the container. Defendant was not prejudiced in any way by the fact that the number of packages in the container were not shown on the bill of lading.

The container was not sealed when delivered to the defendant so that defendant was able to ascertain the number of packages stowed therein if it so desired.

There is no space or printed matter in the form of bill of lading (Exhibit A) drafted by defendant and supplied to plaintiff requesting the plaintiff to show the number of packages said to be stowed in the carrier's container.

The printed terms of defendant's bill of lading provide in part: Clause 6 ". . . This bill of lading is a receipt

*Affidavit of Seymour Simon in Opposition to Defendant's  
Motion and in Support of Plaintiff's Cross-Motion*

only for the number of containers . . . shown in part I on the face of this bill of lading."

The Court of Appeals of this Circuit in a similar case, *Leather's Best v. McMclynx*, 451 F. 2d 800, note 19, cited with approval the Lower Court's finding with respect to a 40' metal shipping container, as follows: "Containers are primarily for the convenience of the carrier since they cut down handling time and can save as much as 90% of the time required for unloading and reloading a vessel."

The 40' metal shipping container supplied by the defendant herein resembled the one shown (while being transported to the pier) in the photograph Exhibit 2 (a); and when removed from the truck chassis, is hoisted into the ship as shown in photograph Exhibit 2 (b). When the doors of a loaded container are opened, the appearance may be similar to the photograph Exhibit 2 (c). These photographs were not taken of the instant container or shipment; they were clipped from a New York Times advertisement January 8, 1967, cited by the Court of Appeals in *Standard Electrica v. Hamburg*, 378 F. 2d 943, note 4.

The plaintiff's shipment was packaged for export by its agent, the Seven Santini Brothers into a minimum of 129 packages for the major part of the shipment in accordance with the invoice attached hereto in relevant part, as Exhibit 3.

Parenthetically, although it is completely irrelevant to the issues, the defendant's attorney alleges that the plaintiff agreed with Santini Brothers to a \$50.00 limitation for the transportation from the plaintiff's home in New Jersey to the defendant's pier in Staten Island. This allegation is in error. The plaintiff's attorney's letter, Exhibit B, enclosed a photostatic copy of the ICC bill of lading issued by the Santini Brothers for the transportation. The letter also points out that Santini


*Affidavit of Seymour Simon in Opposition to Defendant's  
Motion and in Support of Plaintiff's Cross-Motion*

Brothers, being an ICC carrier, is liable as an insurer *in accordance with their tariffs*, provided they are approved by the ICC. Since this matter was irrelevant to the issues, plaintiff's attorney ignored it, pointing out that local carriers in contra-distinction to ICC carriers, may limit their liability to \$50.00 since there are no regulations covering draymen who operate solely within the city of New York. If the defendant would have attached as an exhibit to its moving papers the bill of lading issued by Santini Brothers, it would disclose that no terms thereon limit liability to \$50.00, as alleged by defendant. This document will not be incorporated by the plaintiff since it is completely outside the issues of this case.

WHEREFORE, deponent respectfully requests partial summary judgment in favor of the plaintiff for all its damages (as to be determined in subsequent proceedings) irrespective of any package limitation, or, in the alternative, summary judgment in its favor holding that defendant is not entitled to limit its liability to the amount of \$500 for the loss of its 40' metal shipping container which was supplied to the plaintiff by defendant for the stowage of his shipment for the voyage.

(Sworn to by Seymour Simon, December 19, 1972.)

**Exhibit 1, Annexed to Affidavit of Seymour Simon—  
Freight Bill.**

(See opposite page.) 

Form 1-60

# 37a 11.1.028 AMERICAN EXPORT FREIGHT, INC. Agent

For AMERICAN EXPORT ISBRANDTSEN LINES, INC., Carrier  
26 BROADWAY, NEW YORK, N.Y. 10004

CABLE ADDRESS: EXPOSHP

TELEPHONE: 797-3000

## EXPLANATION OF CODES USED IN:

COLUMN #1 (HTM)	COLUMN #6 (PAY)	COLUMN #8 (CONT.)	COLUMN #7 (PAY)
ITEMS AS SHOWN ON BILL OF LADING	01 - PER 1000 02 - PER 2000 03 - PER 2740 04 - PER 1000 KGS 05 - PER CUBIC FT. 06 - PER 40 CUBIC FT. 08 - MINIMUM CHARGE 10 - PER UNIT 11 - PER M. BOARD FT. 12 - AD VALORUM 13 - NEGOTIATED RATE	17 - PER POUND 20 - HEAVY LIFT CHARGE 21 - EXTRA LENGTH CHG. 22 - SURCHARGE 23 - DISCOUNT 28 - SPECIAL ADDED MINIMUM CHARGE 80 - ADVANCE CHARGE 81 - ARBITRARY 83 - ARBITRARY MINIMUM	1 - PREPAID 2 - PREPAID 3 - COLLECT 4 - COLLECT 5 - COLLECT COLUMNS #8 (CLSM) NOT OTHERWISE SPECIFIED REFRIGERATOR, FREEZE HOUSEHOLD GOODS

## FREIGHT BILL

SHIPPER'S REFERENCE NO.	DATE	PER	BASE	AMOUNT	PAYEE'S A/C	ON WEIGHT	ON MEAS	COST CODE
2305	4/25	40	06	232.00	1421	17000	2205	
-10			23	(232.00)	1421	(17000)	2205	3
96	4/25	40	06	101.40	1421	12500	96	3

PLEASE PAY THIS AMOUNT

\$ 2197.52

SHIPPER CODE

92544

PIRON CODE

0139

PRINT - FULL NAME

U.S. COAL FORWARDER

201 Hamburg

DISPATCH

41

7975


REG. NO.

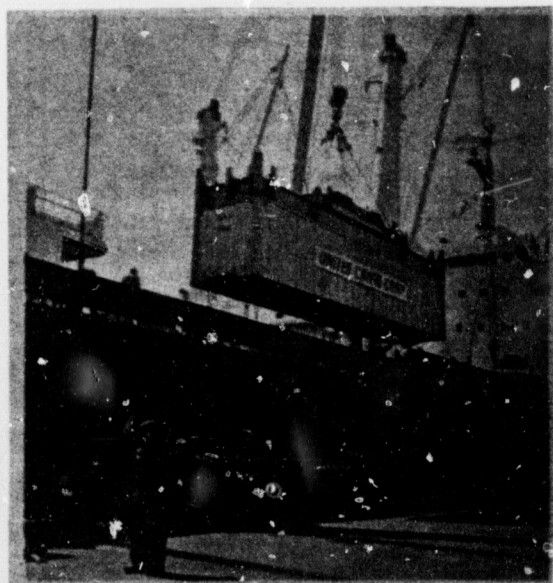
V1-2

NEW YORK


DATE

**Exhibits 2A & 2B, Annexed to Affidavit of Seymour  
Simon—Photographs.**

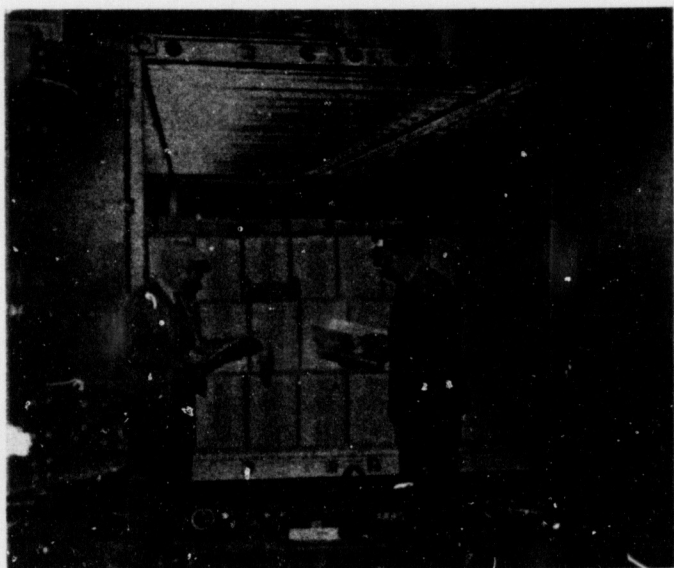
(See opposite page.) 




**Exhibit 2C, Annexed to Affidavit of Seymour Simon—  
Photograph.**

(See opposite page.) 

4/a



**Exhibit 3, Annexed to Affidavit of Seymour Simon—  
Invoice.**

(See opposite page.) 

# 430 **the santini BROTHERS** international movers

1405 JEROME AVENUE • BRONX, N.Y. 10452 • 293-7000

DATE 1-25-71 OUR REF. NO. 70-23338

YOUR REF. NO. \_\_\_\_\_ GEN'L A/C NO. \_\_\_\_\_

A/C P. Rosen bruck LOT NO. \_\_\_\_\_

TARIFF # 102 E SEC. 8 FROM: \_\_\_\_\_ TO: \_\_\_\_\_

INVOICE TO: →

**Corn Products Company**  
**International Plaza**  
**Englewood Cliffs, N.J. 07632**

**Attn: Mrs. Edna Hauser**

## Enclosures

- |   |                                    |
|---|------------------------------------|
| <input type="checkbox"/> Bill of Lading | <input type="checkbox"/> Govt. B/L |
| <input type="checkbox"/> Weight Cert.   | <input type="checkbox"/> Inventory |
| <input type="checkbox"/> Whse. Receipt  | <input type="checkbox"/> Check     |
| <input type="checkbox"/> Access. Cert.  | <input type="checkbox"/> Other     |
| <input type="checkbox"/> Invoices       |                                    |
| <input type="checkbox"/> Packing List   |                                    |
| <input type="checkbox"/> Addenda        |                                    |

Net Weight :  
Dunnage :  
Stripped :  
Miles :  
Cubic feet :

Service Dates	M/B or B/L No.	DESCRIPTION	TOTALS
prepacking rule 51 D refers to Sec.2, Item 105 B col.(C)			
Item	qty.	cont.charges	pkg.rate
dishtacks	45	2.00	6.25
boxes 5-8cft.	4	2.00	2.50
ctns. 3cft.	39	.75	3.50
ctns. 4cft.	12	.75	3.25
ctns. 6cft.	14	.75	4.00
crates min.	3		5.00
wardrobes	6	5.00	.75
nett.ctn.48x72	3	1.90	1.60
nett. ctn.60x75	2	3.25	2.25
crates	1	12cft.	1.50 per cft.
12-30-70	1-68306	Item 270p275,280	
1-21-71	70-23338	Pickup, pack for export in leased container and deliver to N.Y. Pier 17000 Lbs. @14.75 per cwt.	2507.50
		Pickup pack for export and deliver to pier 1000 Lbs. @17.75 percent.	177.50
		Surcharge: 18000 Lbs. @.50 per cwt.	9.00
		Loaders fees: 1250 Lbs. @.66 2/3 per cwt.	7.06
		Customs entry at destination	30.00
			719.50
			3450.56

EST. No.

11

SOL. No.

1

HOUSE

OTHER

3450.56

Many thanks for the privilege of serving you! I.C.C. and P.S.C. regulations require the prompt payment of this invoice within **SEVEN DAYS** from billing date. Kindly make check payable to **SANTINI BROS., INC.**, and return **DUPLICATE COPY** of this invoice along with your remittance to address shown above.

DUPLICATE

SR-10M-6/70

**Reply Affidavit of M. E. DeOrchis in Support of Defendant's Motion for Partial Summary Judgment.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

State of New York,  
County of New York, ss:

M. E. DEORCHIS, being duly sworn, deposes and says:

That he is an attorney-at-law and a member of the law firm of Haight, Gardner, Poor & Havens, attorneys for the defendant, American Export Isbrandtsen Lines, Inc. I make this affidavit in support of defendant's motion for summary judgment in its favor limiting plaintiff's recovery, if any, to the sum of \$500.

This action involves the alleged loss of the contents of a container carried aboard the S. S. Container Forwarder, Voyage 42, pursuant to Bill of Lading #5, New York/Hamburg, dated January 8, 1971.

The Affidavit and Memorandum of Law submitted by Mr. Simon have nothing new to offer. The arguments made have been heard many times before and some of them were made verbatim by Mr. Simon in the *Standard Electrica* case, all in vain.

There is no support for the allegation that the used furniture was worth \$102,917.08, but, whatever its value, the amount would make no difference if the container was the "package". There can be no doubt that the goods were packed for export in the container, as Mr. Simon's Exhibit 3 confirms.

Mr. Simon knows very well why the "stow under deck only" was crossed out of the bill of lading. The rules of the North Atlantic Continental Freight Conference do not permit issuance of under deck bills of lading by ocean carriers in that service. See Exhibit A.

*Reply Affidavit of M. E. DeOrchis in Support of Defendant's  
Motion for Partial Summary Judgment*

Full coverage, if desired, would have been available simply by declaring an excess valuation and paying the extra charge (Clause 17 of the bill of lading).

It is an established practice that *all* containers are sealed for export. Santini Brothers confirmed this to us on the telephone and that the container in question was sealed. The bill of lading requires it in clause 6. This clause is only partially quoted by Mr. Simon at the top of page 3 of his Affidavit. The bill of lading is a receipt for the number of containers or packages shown in Part I. Why should the carrier give a receipt for what it cannot see?

Containers are not any convenience for carriers. If this shipper did not have a container in which it shipped his household goods, export packaging would have cost a fortune! Actually household vans have been used for years to ship such belongings—even before containers—and no one has ever suggested that a van is not a package.

Santini Brothers confirmed to us that during the haul from plaintiff's home in New Jersey to the pier, the carriage is not ICC, but local haul subject to a \$50.00 limitation unless a higher value is declared. However, we agree with Mr. Simon that Santini's contract is irrelevant to the issue here.

The argument that COGSA was intended to apply only to packages which could be loaded by hand is obviously without basis. The word "package" has been a word of art in the American transport business long before COGSA<sup>1</sup>.

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<sup>1</sup>The following cases, decided prior to the enactment of the U. S. Carriage of Goods by Sea Act, 1936, the word "package" was used, and the carrier's liability limited accordingly: *The Calendonier*, 31 F. 2d 257 (2nd Cir. 1929); *The Cayo Mambi*, 1 F. Supp. 116, aff'd 62 F. 2d 791 (2nd Cir. 1933); *George N. Pierce Co. v. Wells Fargo & Co.*, 263 U. S. 278 (1915); *Beaumont Export & Import Co. v. New York & Cuba Mail S.S. Co.*, 286 Fed. 120 (5th Cir. 1923); *Lamb v. Camden and A.R.R.*, 46 N. Y. 271 (1871).

*Reply Affidavit of M. E. DeOrchis in Support of Defendant's  
Motion for Partial Summary Judgment*

The leading English decision as to the meaning of the word "package" is *Whaite v. Lancashire and Yorkshire Railway Company*, L. R. Exchequer Cases Vol. 9, page 67.

In *Whaite*, the plaintiff placed various articles in a wagon which was open at the top. The wagon was then loaded on a truck on the defendant's railway for conveyance to Manchester. Due to a collision on the line, the contents of the wagon were injured, and the question to be decided was whether the wagon, with its contents, was a package within the meaning of a statute restricting the liability of common carriers. At page 69 Bramwell, B., said:

"I think this waggon with its contents was a 'package' within the meaning of the Act. \* \* \* It is to be observed that the plaintiff himself and his foreman authorize us in so describing it, for they say they 'packed' the goods in the waggon, and no one would doubt that this expression was rightly used; but if so, then the waggon so packed with goods was a package."

Obviously weight, size or value should not control the question of what is a "package" in the shipping industry. Mr. Simon knows this. The pallets of TV tubes in *Standard Electrica* could not be lifted by hand!

The shipowner who invests millions of dollars on containerships and containers obviously does not encourage containerization by taking the position that all the cargo shipped in one of his containers will be worth no more than \$500 if a loss occurs. On the other hand, the need for a limitation of some kind seems to be even greater in the case of containers than it was the case of break bulk shipments. House-to-house containers are loaded and sealed by the shipper. In the old days the carrier at least could tell whether he was receiving television

*Reply Affidavit of M. E. DeOrchis in Support of Defendant's  
Motion for Partial Summary Judgment*

tubes or bales of cotton, but sealed containers all look alike. What is a purchaser-for-value really relying upon when he buys a bill of lading which states: "Received for shipment one container No. 2X135, said to contain 100 boxes TV Tubes"? The particulars are furnished by the shipper. The carrier has no means of checking them. Even if the container does contain TV tubes, they may be worth \$25.00 per tube, or \$250 per tube. The contents of some container, copper bars or electronic equipment, may run into hundreds of thousands of dollars. How much insurance should a shipowner take out for a load of 1,800 containers? Obviously, the shipper is in a much better position to obtain the coverage he wants. Those who would concentrate both liability and insurance function on the ocean carrier are "erroneous and misleading", according to Carl E. McDowell, executive vice president of the American Institute of Marine Underwriters. The Hague-Visby Rules, signed in 1968, but ratified by only one country to date, substituted a limit of \$662 or 90 cents per pound, whichever is greater, in place of the package limitation. On this basis, a ship carrying 1,800 20-foot containers averaging 12 long tons each would require a P. and I. coverage of \$43,000,000 by the shipowner, and on the basis of \$3.50 per pound, a limit being urged by some U. S. Government officials, the insurance required would amount to \$170,000,000 per voyage. The impact on freight rates would be dramatic, even if such coverage could be purchased, and the cargo owner would be forced to purchase such insurance since the cost is built into the freight rate. Moreover, carrier's liability does not cover all the risks and the shipper would still have to buy some insurance of his own. Mr. Simon's push for higher carrier liability is short-sighted. As Mr. McDowell points out, "Cargo insurance spreads the premium cost of insurance among cargo interests in direct

*Exhibit A, Annexed to Reply Affidavit of M. E. DeOrchis*

relation to the nature of their risks, whereas the cost (or insurance premium) of liability is spread over freight rates on an average basis, with the burden of loss payments falling on one policy."

When all is said and done, two points remain steadfast in the "package limitation" dispute.

First, that Congress set the figure of \$500 and Congress should change it, not the Courts.


Second, no one is going to pay to insure the shipper's property except the shipper. The shipper can do it himself by buying cargo insurance or the carrier can do it for him and include the cost of his freight rate. Obviously if the package limitation were \$50,000 instead of \$500 the freight rate would be higher.

WHEREFORE, deponent respectfully prays for an order, granting partial summary judgment in its favor limiting plaintiff's recovery, if any, to \$500, in accordance with the provisions of 46 U. S. Code, Section 1304(5).

(Sworn to by M. E. DeOrchis, December 27, 1972.)

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**Exhibit A, Annexed to Reply Affidavit of M. E. DeOrchis—Rules of North Atlantic Continental Freight Conference.**

(See opposite page.) 

49a  
**NORTH ATLANTIC CONTINENTAL  
FREIGHT CONFERENCE**

(PARTICIPATING CARRIERS APPEAR ON PAGE NUMBER 1)

**FREIGHT TARIFF 29 FMC-4**

**NAMING**

**COMMODITY RATES AND CONDITIONS  
FROM**

**NORTH ATLANTIC PORTS OF THE UNITED STATES  
IN THE EASTPORT, MAINE/HAMPTON ROADS RANGE**

**TO**

**ALL PORTS OF CALL  
IN BELGIUM, HOLLAND, AND GERMANY  
(Excluding German Baltic Ports)**

Transportation under the terms and conditions of this Tariff is subject to the terms and conditions of the individual Bills of Lading currently in use by each Member Line as set forth in North Atlantic Continental Freight Conference Bill of Lading Tariff FMC-1.

The Transportation of explosives, inflammables, corrosive materials, compressed gases, combustible liquids and other hazardous articles will be governed by the Code of Federal Regulations, i.e. Title 46 -- Shipping, Parts 146 to 149 as Revised.

This Tariff will NOT be supplemented. Changes will be made by reissuance of pages affected. Each re-issued page will bear a correction number in the top right hand corner. To ensure that all changes have been received, correction numbers should be checked off, on page 2, as revised pages are received.

(D)

The commodities listed in this tariff follow the Standard International Trade Classification, Revised 1963, as published by the United Nations.

**TARIFF INTERPRETATION -- ALL QUESTIONS OF INTERPRETATION, APPLICATION OR CLARIFICATION OF ANY PROVISION OF THIS TARIFF MUST BE REFERRED TO THE CONFERENCE OFFICE.**

**REQUESTS FOR MODIFICATION OF RATES OR COMPLAINTS SHOULD BE FILED WITH THE CONFERENCE CHAIRMAN. THE FORM OF REQUEST APPEARS ON PAGE 23/23A.**

**EFFECTIVE: JANUARY 1, 1972**

Issued by  
**C. J. MORAN, Chairman**  
17 BATTERY PLACE  
NEW YORK, N. Y. 10004

North Atlantic CONTINENTAL Freight Conference  
Tariff No. (28) FMC-3

FROM: EASTPORT, MAINE/HAMPTON ROADS RANGE- TO: ANTWERP/ROTTERDAM/AMSTERDAM  
HAMBURG/BREMEN/BREMERHAVEN

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Cancels

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Effective Date

December 1, 1969

Correction

## TARIFF RULES AND REGULATIONS

13. TRAILER/CONTAINER TRAFFIC  
GENERAL RULES

- A. These Rules apply only to non-disposable intermodal Trailers/Containers (Hereinafter referred to as Containers) and Flats to be agreed upon by the North Atlantic Continental Freight Conference, but the minimum length of a Container or Flat must NOT be less than nineteen and a half (19½) feet. Member Lines will reject for shipment any Container provided by Shippers which does not have attached to it the Manufacturer's plates clearly indicating all of the specifications of the Container, including its maximum weight capacity. Furthermore, Member Lines will reject any container delivered to them where Shippers have NOT declared the gross weight of the Container and contents, and/or where contents exceed the maximum approved weight capacity.
- B. The Member Lines will NOT accept for transportation in Containers, and rates listed herein do not apply to any article which because of its size cannot be loaded wholly within the Container's inside dimensions or capacity.
- C. Since it is necessary that Containers be stowed on or under deck at the Member Line's options, Bill of Lading specifically claused to provide under-deck stowage will NOT be issued.
- D. When palletized shipments are carried in containers under Service 2 or 3, the Member Lines will assess freight on the actual weight or measurement of the cargo EXCLUDING the pallet. Under Service 1, freight will be assessed on the actual weight or measurement of the cargo AND the pallet.
- E. Cargo in containers may be transhipped from Amsterdam/Rotterdam to Antwerp or vice versa but at the Bill of Lading destination must be delivered to the Member Line's Terminal only. The Cargo MUST be assessed the same charges as would have been paid had it been delivered to the final destination port named in the Bill of Lading by direct sea service.
- F. If a shipper requires insulated containers for movement of Non-Temperature Controlled cargo, a request for such container MUST be made at the time of the booking. Cargo so transported shall be subject to a charge of 10% over and above the applicable tariff rate and the Bill of Lading must be claused "INSULATED STOWAGE".
- G. All expenses which may be incurred for Customs examination either at port of loading or at port of discharge MUST be paid by the Shipper/Consolidator or Consignee.

49c

Printed in U.S.A.

North Atlantic CONTINENTAL Freight Conference  
Tariff No. (29) FMC-4

FROM: EASTPORT, MAINE/HAMPTON ROADS RANGE TO: ANTWERP/ROTTERDAM/AMSTERDAM  
HAMBURG/BREMEN/DREMFRAHVEN

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TARIFF RULES AND REGULATIONS

13. TRAILER/CONTAINER TRAFFIC  
GENERAL RULES

- A. These Rules apply only to non-disposable intermodal Trailers/Containers (Hereinafter referred to as Containers) and Flats to be agreed upon by the North Atlantic Continental Freight Conference, but the minimum length of a Container or Flat must NOT be less than nineteen and a half (19½) feet. Member Lines will reject for shipment any Container provided by Shippers which does not have attached to it the Manufacturer's plates clearly indicating all the specifications of the Container, including its maximum weight capacity. Furthermore, Member Lines will reject any container delivered to them where Shippers have NOT declared the gross weight of the Container and contents, and/or where contents exceed the maximum approved weight capacity.
- B. The Member Lines will NOT accept for transportation in Containers, and rates listed herein do not apply to any article which because of its size cannot be loaded wholly within the Container's inside dimensions or capacity.
- (c) C. Since it is necessary that containerized cargo be stowed on or under deck at carriers option, bills of lading specifically claused to provide underdeck stowage will NOT be issued for such cargo nor will it be permissible to issue any other guarantees to the effect that underdeck stowage will be provided.
- D. When palletized shipments are carried in containers under Service 2 or 3, the Member Lines will assess freight on the actual weight or measurement of the cargo EXCLUDING the pallet. Under Service 1, freight will be assessed on the actual weight or measurement of the cargo AND the pallet.
- E. Cargo in containers may be transhipped from Amsterdam/Rotterdam to Antwerp or vice versa but at the Bill of Lading destination must be delivered to the Member Line's Terminal only. The Cargo MUST be assessed the same charges as would have been paid had it been delivered to the final destination port named in the Bill of Lading by direct sea service.
- F. If a shipper requires insulated containers for movement of Non-Temperature Controlled cargo, a request for such containers MUST be made at the time of the booking. Cargo so transported shall be subject to a charge of 10% over and above the applicable tariff rate and the Bill of Lading must be claused "INSULATED STOWAGE".
- G. All expenses which may be incurred for Customs examination either at port of loading or at port of discharge MUST be paid by Shipper/Consolidator or Consignee.
- H. Materials and labor required for securing and properly stowing Cargo in Containers moving in Service 1 and 2 such as lashing, bulk heads, cross members, platforms, dunnage, etc. MUST be supplied by shippers at their expense and the Member Line shall NOT be responsible for such materials nor their return after use. In any event, the Member Line shall NOT be liable for any claim for loss or damage to the cargo arising out of improper or inadequate mixing, stuffing, tallying or bracing of cargo within the container.
- I. Shipper assumes all responsibility for contamination of the container by his cargo and is liable for the cost of Cleaning and/or Deodorization of the container.
- J. Shippers desiring to place a lock on any Container shall be at liberty to do so, but they MUST assume full responsibility for sending the proper key to the Consignee.
- K. The vessel's liability will be limited to \$500.00 with respect to the entire contents of each Container, shipped under Service 1 or 2, except when the Shipper declares a higher valuation and has paid additional freight on such declared valuation pursuant to the appropriate rule of this tariff.
- L. (a) The Shipper shall furnish the Member Line with a list of contents showing description of cargo and the gross weight and cubic measurements of the contents of each Container. The Member Line reserves the right to open and inspect the contents of a Container. The Member Line will reseal the container and indicate on the Bill of Lading that an inspection has been made.  
(b) In case shippers fail to provide a list setting forth description of cargo and the gross weight and cubic measurements of the contents of each container freight will be calculated on the highest rated commodity in the container and will be based on the net weight of the container (gross weight less tare weight) for weight rated commodities and the total inside cubic capacity of the container for measurement rated commodities.  
(c) Ocean freight on such containers is to be considered earned and shall not be advised unless such information is submitted to the carrier before the container leaves the carrier's custody.  
(d) Any expenses resulting from the lack of such detailed information to be for the account of the cargo.

Printed in U.S.A.

North Atlantic CONTINENTAL Freight Conference  
Tariff No. (29) FMC-4

FROM: EASTPORT, MAINE/HAMPTON ROADS RANGE TO: ANTWERP/ROTTERDAM/AMSTERDAM  
HAMBURG/BREMEN/BREMERHAVEN  
/ZEEBRUGGE (c)

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Effective Date	
June 15, 1972	
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TARIFF RULES AND REGULATIONS

13. TRAILER/CONTAINER TRAFFIC  
GENERAL RULES

- A. These Rules apply only to non-disposable intermodal Trailers/Containers (Hereinafter referred to as Containers) and Flats to be agreed upon by the North Atlantic Continental Freight Conference, but the minimum length of a Container or Flat must NOT be less than nineteen and a half (19½) feet. Member Lines will reject for shipment any Container provided by Shippers which does not have attached to it the Manufacturer's plates clearly indicating all the specifications of the Container, including its maximum weight capacity. Furthermore, Member Lines will reject any container delivered to them where Shippers have NOT declared the gross weight of the Container and contents, and/or where contents exceed the maximum approved weight capacity.
- B. The Member Lines will NOT accept for transportation in Containers, and rates listed herein do not apply to any article which because of its size cannot be loaded wholly within the Container's inside dimensions or capacity.
- C. Since it is necessary that containerized cargo be stowed on or under deck at carriers option, bills of lading specifically clausued to provide underdeck stowage will NOT be issued for such cargo nor will it be permissible to issue any other guarantees to the effect that underdeck stowage will be provided.
- D. When palletized shipments are carried in containers under Service 2 or 3, the Member Lines will assess freight on the actual weight or measurement of the cargo EXCLUDING the pallet. Under Service 1, freight will be assessed on the actual weight or measurement of the cargo AND the pallet.
- E. Cargo in containers moving under thru Bill of Lading may be transhipped between the ports of Amsterdam-Rotterdam-Antwerp-Zeebrugge at the member line's expense provided delivery at the Bill of Lading destination is given at the member line's terminal only. The Cargo MUST be assessed the same charges as would have been paid had it been delivered to the final destination port named in the Bill of Lading by direct sea service. (c)
- F. If a shipper requires insulated containers for movement of Non-Temperature Controlled cargo, a request for such containers MUST be made at the time of the booking. Cargo so transported shall be subject to a charge of 10% over and above the applicable tariff rate and the Bill of Lading must be clausued "INSULATED STOWAGE".
- G. All expenses which may be incurred for Customs examination either at port of loading or at port of discharge MUST be paid by Shipper/Consolidator or Consignee.
- H. Materials and labor required for securing and properly stowing Cargo in Containers moving in Service 1 and 2 such as lashing, bulk heads, cross members, platforms, dunnage, etc. MUST be supplied by shippers at their expense and the Member Line shall NOT be responsible for such materials nor their return after use. In any event, the Member Line shall NOT be liable for any claim for loss or damage to the cargo arising out of improper or inadequate mixing, stuffing, tallying or bracing of cargo within the container.
- I. Shipper assumes all responsibility for contamination of the container by his cargo and is liable for the cost of Cleaning and/or Deodorization of the container.
- J. Shippers desiring to place a lock on any Container shall be at liberty to do so, but they MUST assume full responsibility for sending the proper key to the Consignee.
- K. The vessel's liability will be limited to \$500.00 with respect to the entire contents of each Container, shipped under Service 1 or 2, except when the Shipper declares a higher valuation and has paid additional freight on such declared valuation pursuant to the appropriate rule of this tariff.
- L. (a) The Shipper shall furnish the Member Line with a list of contents showing description of cargo and the gross weight and cubic measurements of the contents of each Container. The Member Line reserves the right to open and inspect the contents of a Container. The Member Line will reseal the container and indicate on the Bill of Lading that an inspection has been made.  
(b) In case shippers fail to provide a list setting forth description of cargo and the gross weight and cubic measurements of the contents of each container freight will be calculated on the highest rated commodity in the container and will be based on the net weight of the container (gross weight less tare weight) for weight rated commodities and the total inside cubic capacity of the container for measurement rated commodities.  
(c) Ocean freight on such containers is to be considered earned and shall not be adjusted unless such information is submitted to the carrier before the container leaves the carrier's custody.  
(d) Any expenses resulting from the lack of such detailed information to be for the account of the cargo.

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